

Matter of: DGS Contract Services

File: B-254512

Date: December 17, 1993

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John Jordan, Jr., for Diamond Detective Agency, Inc., an interested party.

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DIGEST

Although the apparent low bid on a contract for armed guard services was mathematically unbalanced where bidder front-loaded all equipment and start-up costs in its base year price and these costs were not for unique or specialized equipment, it was not materially unbalanced, where the bid becomes low in the first month of the third option period of the contract which included 4 option periods, and where agency reasonably intends to exercise all options.

DECISION

DGS Contract Services protests the award of a contract to Diamond Detective Agency, Inc. under invitation for bids (IFB) No. GS-08P-93-JWC-0101, issued by the General Services Administration (GSA), for armed guard services at six locations in Utah. DGS alleges that Diamond's bid was mathematically and materially unbalanced and should have been rejected.

We deny the protest.

The IFB was issued on July 1, 1993, and contemplated award of a contract, wherein the standard services provided would be on a fixed-price per month basis, and the additional or emergency services provided would be on a per hour basis. The solicitation sought a contractor to provide armed guard services at various locations in Utah for a base year contract term of 12 months and four additional 12-month periods. The IFB included the standard "Evaluation of

Options" clause, set out at Federal Acquisition Regulation (FAR) § 52.217-5, which advises bidders that the government will evaluate bids on the total price for the base year and all options; the IFB also provided a formula to be used to determine the lowest total evaluated bid. The IFB included the standard sealed bidding award clause set out at FAR § 52.214-10, that in pertinent part cautions that a bid that is materially unbalanced may be rejected as nonresponsive.

On August 3, GSA received bids from two bidders: DGS and Diamond. The bids were priced as follows:

	<u>DGS</u>	<u>Diamond</u>
Base Year	\$336,000	\$398,940
1st Option	330,000	299,880
2nd Option	330,000	298,464
3rd Option	330,000	299,088
4th Option	330,000	299,340
Total	\$1,656,000	\$1,595,712

In a letter dated August 4, DGS filed an agency-level protest alleging that Diamond's bid was mathematically and materially unbalanced and should be rejected. The contracting officer asked Diamond to verify its bid and to submit information regarding the calculation of its bid prices. In response, Diamond explained that its base year price was front-loaded in order to allow the firm to recoup its capital investment for equipment, uniforms, training, and other start-up costs during the initial contract period. Diamond further explained that its option year prices contained only the cost of wages, administration, and any related cost/expenses.

Upon review of Diamond's worksheets and other supporting data, the contracting officer found that although the firm's prices were related to its actual costs, Diamond had included all its start-up costs in its base year price. As the agency notes, by pricing its bid in this manner, Diamond shifted from itself to the government the risk that contract performance might not extend to 5 years. In addition, Diamond had not shown that the equipment required to perform the contract was of a unique or specialized nature which would permit the firm to front-load its start-up costs in the base year. The contracting officer therefore determined that Diamond's bid was mathematically unbalanced. However, the contracting officer concluded that Diamond's bid was not materially unbalanced since the agency intended to exercise all the option years under the contract and there was no doubt that award to Diamond would result in the lowest overall cost to the government. The agency made award to Diamond on August 13. This protest followed.

DGS protests that Diamond's bid should be rejected as mathematically and materially unbalanced. A bid is mathematically unbalanced if each item of work does not carry its share of the cost of the work plus overhead and profit, or the bid is based on nominal prices for some work and enhanced prices for other work. Residential Refuse Removal, Inc., 72 Comp. Gen. 68 (1992), 92-2 CPD ¶ 444; Omega One Co., B-251316.2; B-251316.3, Mar. 22, 1993, 93-1 CPD ¶ 254. Where there is reasonable doubt that acceptance of a mathematically unbalanced bid will result in the lowest overall cost to the government, the bid is materially unbalanced and cannot be accepted. FAR §§ 14.404-2(g), 52.214-10(e); Mitco Water Lab., Inc., B-249269, Nov. 2, 1992, 92-2 CPD ¶ 301; Earth Eng'g and Sciences, Inc., B-248219, July 30, 1992, 92-2 CPD ¶ 72.

Here, as stated previously, GSA concedes and the record establishes, that Diamond's bid is mathematically unbalanced. Thus, the issue before us is whether acceptance of Diamond's mathematically unbalanced bid will result in the lowest overall cost to the government. G.L. Cornell Co., B-236930, Jan. 19, 1990, 90-1 CPD ¶ 74. We conclude that Diamond's bid is not materially unbalanced. Our material unbalancing analysis focuses on various factors, including whether the government reasonably expects to exercise the options, *id.*, and whether the bid is so extremely front-loaded that it does not become low until late in the contract term, including option years. See Residential Refuse Removal, Inc., *supra*.

Diamond's bid becomes low, vis-a-vis DGS' bid, in the first month of the third option year. GSA asserts in its protest report that due to the nature and necessity of the service to be provided, the number of years that the awardee has been in the security guard business and the excellent performance and business reputation of the awardee, it is highly unlikely that the government would not exercise the options. Specifically, GSA explains that the Social Security Administration (SSA) has a nationwide requirement for armed guard services at SSA's offices, including its two locations in Utah, to protect employees and customers of the SSA. The Internal Revenue Service (IRS) requires armed guard services to protect its employees and to secure access to IRS records both in Ogden and Clearfield, Utah; and the Defense Logistics Agency has a requirement to safeguard strategic materials located at the GSA building in Clearfield, Utah. The agency further explains that the security guard services are essential at the Frank E. Moss Courthouse in Salt Lake City, Utah and the Federal Depot in Clearfield, Utah because the local police departments do not have jurisdiction and would not be able to exercise their police authority at these locations.

DGS has offered no specific rebuttal to the agency's position; instead, the protester responds to the agency report with one argument. DGS alleges that the Vice President's National Performance Review (NPR) recommendations, as they are implemented, will likely result in a significant restructuring of GSA during the next 2 years. The protester speculates that the implementation of the NPR recommendations will affect GSA's ability to operate in a "business as usual" manner and that GSA therefore will likely be precluded from exercising the third and fourth option periods in Diamond's contract. The record shows the need for these security services is not likely to change during the 5-year contract period since the security services are essential to the sites under the contract and the sites are expected to remain open for the contract's duration. The protester does not explain how the NPR implementation affects operations at these sites. Since there is no reasonable doubt that Diamond's bid will result in the lowest overall cost to the government, Diamond's bid is not materially unbalanced. Cf. Residential Refuse Removal, Inc., supra.

The protest is denied.

James F. Hinchman
General Counsel